of this case there was a total failure on the part of the prosecution to establish any criminal intent.

The appeal is allowed and the conviction quashed.

Appeal allowed and conviction quashed.

PUBLIC PROSECUTOR v. LIM CHAU SIU.

[App. Crim. Juris. (Paul Storr, J.) August 8, 1951]

[Johore Bahru — Criminal Appeal No. 9 of 1951]

Emergency (Rubber Control) Regulations, 1949, regulation 5(2) — Whether person convicted can be bound over under s. 294 of Criminal Procedure Code.

The respondent (accused) was charged under Emergency (Rubber Control) Regulations, 1949, regulation 5(2). The learned Magistrate found the respondent guilty and convicted her as charged. He sentenced her to be bound over to be of good behaviour for one year under section 294 of the Criminal Procedure Code.

Regulation 5(2) reads as follows:

"5(2). Any person who, on or after the 6th day of October, 1950, is unlawfully in possession of rubber shall be guilty of an offence and shall, on conviction, be punished by imprisonment for a term of not less than one year and not more than five years."

The Public Prosecutor appealed against the sentence as one being inadequate for the offence. He made two submissions to the Court: (1) that the learned Magistrate's powers under section 294 of the Criminal Procedure Code did not cover a person convicted under regulations 5(2) of the Emergency (Rubber Control) Regulations, 1949, as that regulation contained a minimum sentence of one year's imprisonment, and (2) that, if he was wrong in the above submission, then the learned Magistrate had not used his discretion in a judicial manner in view of the very serious nature of the offence which was against a special provision of the law whereby the offence was made especially reprehensible during the present emergency and that therefore the sentence was grossly inadequate in the circumstances of the case.

Held, that from the mandatory provisions of the regulation it is clear that if a Court convicts then it must sentence the convicted person to a minimum of one year's imprisonment or to such other term up to 5 years, and that the provisions of section 294(i), Criminal Procedure Code cannot have any application to a case where the Court has convicted a person under regulation 5(2) of these Regulations. However much the Court may sympathise with a convicted person, it is its duty to see that the law is properly administered as laid down by the legislature and that any feeling of sympathy that may be felt towards the accused person should not affect its decision.

Case referred to :—

(1) *Rennie v. Boardman* 111 L.T.R. 713.

CRIMINAL APPEAL: Appeal from Circuit Magistrate's Court, Kluang.

W. M. McCall (D.P.P.) for the appellant.

The respondent appeared in person.

The facts and arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Paul Storr, J. : — In this case the respondent (accused) was charged before the Circuit Magistrate at Kluang, under regulation 5(2) of the Emergency (Rubber Control) Regulations, 1949, with being in possession of about 9 katties of scrap rubber. The learned Magistrate found the respondent guilty and convicted her as charged. He sentenced her to be bound over to be of good behaviour for one year with cash security in the sum of $250 or in default one year's simple imprisonment. His reasons for so doing are given in his grounds of judgment as follows :—

"(a) The accused is a first offender for consideration under section 294 of the Criminal Procedure Code.

(b) The accused though a married woman has, her husband being a detainee at Majidi Camp under the Emergency Regulations, to feed 6 children ranging from the age of 14 years to 2 years."

Mr. W. M. McCall, the Deputy Public Prosecutor, appealed against the sentence as one being inadequate for the offence. He made two submissions to the Court: (1) that the learned Magistrate's powers under section 294 of the Criminal Procedure Code did not cover a person convicted under regulation 5(2) of the Emergency (Rubber Control) Regulations, 1949, as that regulation contained a minimum sentence of one year's imprisonment, and (2) that, if he was wrong in the above submission, then the learned Magistrate had not used his discretion in a judicial manner in view of the very serious nature of the offence which was against a special provision of the law whereby the the offence was made especially reprehensible during the present emergency and that therefore the sentence was grossly inadequate in the circumstances of the case.

With regard to the first submission made by the learned Deputy, section 294(i) of the Criminal Procedure Code reads as follows :—

"294. (i) When any person not being a youthful offender has been convicted of any offence punishable with imprisonment before any Court if it appears to such Court that regard being had to the character, antecedents, age, health or mental condition of the offender or to the trivial nature of the offence or to any extenuating circumstances under which the offence was committed it is expedient that the offender be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties and during such period as the Court may direct to appear and receive judgment if and when called upon and in the meantime to keep the peace and be of good behaviour."

It is clear from the wording of this section that the binding over after conviction is a substitution for imprisonment and remains so as long as the person convicted complies with the terms of the bond entered into. The point arises therefore as to whether section 294(i) can apply to the provisions of regulation 5(2)

of the Emergency (Rubber Control) Regulations, 1949, which reads as follows :—

"5. (2) "Any person who, on or after the 6th day of October, 1950, is unlawfully in possession of rubber shall be guilty of an offence and shall, on conviction, be punished by imprisonment for a term of not less than one year and not more than five years."

From the mandatory provisions of the regulation it is clear that if a Court convicts then it must sentence the convicted person to a minimum of one year's imprisonment or to such other term up to 5 years, and I have therefore come to the conclusion that the provisions of section 294(i), Criminal Procedure Code cannot have any application to a case where the Court has convicted a person under regulation 5(2) of these Regulations.

The second submission by the learned Deputy does not therefore arise.

If it is a case, however, where the rubber involved was practically worthless due to its quality and quantity, then I think it would be quite proper for a Magistrate to act under section 173A, Criminal Procedure Code, but at the same time I would draw the attention of the Magistrates to the words of Avory, J. in the case of *Rennie v. Boardman*[1] :—

"On more than one occasion it has been pointed out by this court that the provision in the statute of 1907 does not allow the justices to go to the length of saying that a particular offence created by a statute is, in their opinion, a trifling one, and that therefore they will not put the law into force. It only entitles them to say that when an offence has been committed the circumstances surrounding the whole affair make it an offence of a merely trifling nature."

His Lordship was referring to section 1 of the Probation of Offenders Act, 1907, which corresponds to section 173A(i) of the Criminal Procedure Code.

Lastly I would add that however much the Court may sympathise with a convicted person, it is its duty to see that the law is properly administered as laid down by the legislature and that any feeling of sympathy that may be felt towards the accused person should not affect its decision.

In view of the above, the appeal will be allowed, the sentence of the learned Magistrate will be set aside, and the cash security of $250 repaid to the respondent, and I sentence her to undergo one year's simple imprisonment.

Appeal allowed.

S. MANGALAM v. THE PLANTERS' LOANS BOARD.

[Court of Appeal (Foster Sutton, C.J. (F. of M.), Brown, Ag. C.J. (S.) and Abbott, J.) August 13, 1951]

[Kuala Lumpur — Civil Appeal No. 20 of 1951]

Planters' Loan Board — Whether debt owed to the Board is debt owed to the Government of the Federated Malay States.

The facts and arguments are fully set out in Judgment of the learned trial Judge reported in (1951) M.L.J. 100 and in the Judgment of Foster Sutton, C.J.

Held on appeal, (1) that although the Planters' Loans Fund Enactment provides for a considerable degree of governmental control of the Board, and it was incorporated to operate a fund established with public money and it does in a sense act on behalf of the Government, the legislation confers upon the Board the power of contracting as principals and that the loans with which this Court is concerned are debts to the Board and not to the Government; and (2) that the question raised by the first "agreed issue" should have been answered in the negative.

Cases referred to :—

(1) *Graham v. Public Works Commissioners* (1901) 2 K.B. 781.

(2) *Tamlin v. Hanaford* (1950) 1 K.B. 18.

(3) *International Ry. Co. v. Naigara Parks Commission* (1941) A.C. 342.

APPEAL from the judgment of Wilson, J. reported in (1951) M.L.J. at p. 100.

W. G. W. Hastings for the appellant — defendant.

F. G. Charlesworth for the respondents — plaintiffs.

Cur. Adv. Vult.

Foster Sutton, C.J. : — These proceedings were commenced by way of Originating Summons under which the respondents, the Planters' Loans Board, sought an order for the sale by public auction of certain lands in respect of which the appellant had executed charges for the purpose of securing the repayment of two loans, and interest thereon, made to her by the Board.

For the purpose of the determination of the issues, which were agreed, the parties admitted, *inter alia,* that no payment was made by the appellant on account of principal or interest until the 17th August, 1945, when the sum of $31,189.52 in Japanese occupation currency was voluntarily paid by the appellant to the Japanese Custodian in whom the respondents' property had been vested by order or decree of the Japanese occupation authorities, and that the amount so paid was in purported repayment of the total amount, including